

IV. REMARKS

Status of the Claims

Claims 1, 9 and 12 are amended. Claim 2 is canceled. Claims 1, and 3-13 are presented for further consideration.

Summary of the Office Action

Claims 1-14 stand rejected under 35USC103(a) on the basis of the cited reference Wan, U.S. Patent No. 5,411,046 in view of the teaching of Zvezdaryk. The Examiner is respectfully requested to reconsider his rejection in view of the above amendments and the following remarks.

The Invention

Independent claims 1, as amended, defines an enclosure for use as a photographic stage, especially adapted for digital photography. The enclosure is a collapsible tent like structure that is constructed of color corrected, translucent nylon through which light is diffused to the interior of the enclosure in a neutral manner, namely without color alteration (color corrected). A removable floor panel provides a rigid base upon which items can be supported for photographing. All of the panels forming the enclosure are constructed of the color corrected, translucent nylon to diffuse light from an external source evenly on the subject being photographed. None of the cited references, either alone or in combination, show such a device.

Discussion of the Cited Reference

The Examiner has cited the reference Wan in support of the rejection based on anticipation. The cited reference describes a tent for use as a temporary shelter for adults. The structure of

the tent comprises four triangular shaped panels that are collapsible. At least one of the panels can be transparent or translucent. The panels may be partially comprised of gauze for ventilation. The Examiner characterizes the teaching of Wan as follows:

"Wan teaches a collapsible "photography" tent(fig. 3a; tent capable of being employed for various uses including storing cameras, use in a photo shoot serving as an internal stage, etc.)"

There is no support in the cited reference Wan for the Examiner's characterization. Its use is not indicated to be in anyway connected with photography. The translucent panel of Wan is provided to allow a person within the tent to see. There is no mention of constructing the panels of the tent of Wan to provide the diffusion of color corrected light into the interior. Nor is there any mention of constructing a stage upon which a photographic subject may be placed. The diffusion of light is needed to minimize shadows and illuminate the subject, while it is securely supported on the rigid stage. The words color corrected are words of art used to indicate a neutral transmission of light. This means that the color corrected nylon is not subjected to any color enhancement in the dying process. These are specific structural limitations that support the photographic purpose of the subject invention. The statements in the claims describing intended use are, therefore, supported by structural and functional limitations that should not be ignored.

The Examiner combines the teaching of Wan with the disclosure of the reference Zwezdaryk. Zwezdaryk describes a portable sauna enclosure for use in a bath tub that includes a steam generator. There is nothing in Zwezdaryk related to photography. The

combination of teachings does not remedy the deficiencies of the cited reference Wan.

Applicant submits that the term "color corrected" is a well known term in the art of photography and is frequently used to identify certain fabrics having neutral light transmitting characteristics beneficial to photography.

Applicant submits that the Examiner has failed to establish a prima facie case under 35 USC 103a.

" In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification. The prior art must provide one of ordinary skill in the art the motivation to make the ... modification..." IN RE LALU, 747 F.2d 703

The cited references fail to disclose, either alone or in combination, any features which suggest the adaptability of either the shelter of Wan or the portable sauna of Zvezdaryk to photographic uses. The Examiner has not sustained his burden.

The U.S. Court of Appeals for the Federal Circuit indicated that it is important to be careful in cases which are technologically less complex as,

"the very ease with which the invention can be understood increases the risk of a hindsight syndrome in which the teachings of the inventor are used against the inventor himself." (Ruiz v. A.B. Chance Co., Fed. Cir., No.99-1557, 12/6/00).

Applicants submit that this is what is occurring in the present application.

The above arguments are equally applicable to the rejected dependent claims.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,


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13 October 2004
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